

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re Matter of ) MM DOCKET No. 94-29  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
 )  
(Willows and Dunnigan, CA) )  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: John A. Karousos  
Acting Chief, Allocations Branch

**MOTION TO EXPEDITE**

Pacific Spanish Network, Inc. ("PSN"), licensee of KQSC  
(FM), respectfully moves to expedite the captioned proceeding in  
view of recent developments described fully below.

Preliminary Statement

PSN and its counsel earnestly appreciate the backlog of  
cases currently burdening the staff of the Allocations Branch.  
PSN and its counsel also fully recognize that motions to expedite  
are generally disfavored in FM allocations cases. Notwithstand-  
ing this understanding, recent events compel the licensee of KQSC  
(FM) to request the expedition of the Petition for Rule Making  
that, next month, will have been pending for one year.

Background

Petitioner seeks to upgrade its licensed facility from Class  
A to Class B1 by the only means possible -- the reallocation of  
Channel 288 from Willows, CA to Dunnigan, CA.

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In a Notice of Proposed Rule Making, 9 FCC Rcd 1802 (1994), the Commission found that the proposal could serve the public interest by providing Dunnigan with its first local aural transmission service and by enabling the Class A FM station to expand its service area. <sup>1/</sup>

On June 1, 1994, PSN filed Comments that included data requested by the NPRM. PSN's engineering exhibits established that the proposed change in principal community would not create any "white or grey areas" and that, in fact, every person residing within the proposed loss area would continue to receive "at least nine aural reception services" and that 76% of the persons in the loss area would receive 11 aural services. See PSN Comments at Exhibit E-1 at 2. PSN also demonstrated that "most of the area within the proposed gain area is rural" and would benefit from an additional aural service [sixth service to 55 persons, seventh service to 477 persons, etc.]. See Id. at Exhibits E-8 and E-11. Finally, PSN showed that no other FM channel of any class is available to provide Dunnigan with its first local service. Id.

No counterproposals were filed. Three adverse Comments were filed -- by potential competitors with PSN's proposed, upgraded service. Two supporting Comments were filed, one by another permittee who presented additional public interest reasons that favored a grant of PSN's proposal.

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<sup>1/</sup> The NPRM, supra, requested Petitioner to provide data with respect to areas and population in the loss and gain areas, which was provided by Petitioner in its initial Comments.

On June 21, 1994, PSN filed Reply Comments that refuted the allegations made by its potential competitors. No Reply Comments were filed by two of the three Commenters who initially filed adverse comments.

### **DISCUSSION**

1. KQSC (FM) Problems. The co-location at Willows, CA, of stations KQSC (FM) [formerly KIQS-FM] and KIQS (AM) -- both of which were commonly owned prior to the sale of the FM to Pacific Spanish Network, Inc. -- now presents an operational problem for PSN that threatens to take its FM station dark. As detailed below, KQSC (FM) is now in danger of losing its tower site and its studio.

2. Following the Closing on the FM station, <sup>2/</sup> the Assignor granted PSN the right for its FM station to use both the KIQS (AM) tower and its studio space on an interim basis. <sup>3/</sup> The parties' agreement was based on their mutual assumption that the pending Rule Making -- to upgrade the FM station and to change the community of license -- would be completed within a year after its December 1993 filing and, thus, that by approximately

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<sup>2/</sup> The call sign of the FM station subsequently was changed from KIQS (FM) to KQSC (FM).

<sup>3/</sup> See Sworn Statement of PSN owner Jaime Bonilla Valdez, attached hereto as Appendix A.

the end of 1994 PSN would no longer need to lease tower or studio space from the KIQS (AM) owner. <sup>4/</sup>

3. The owner of KIQS (AM), Anthony Rusnak, acknowledges that KQSC (FM) requires continued use of its facilities at Willows because no FCC decision regarding the Rule Making has been issued; nevertheless, PSN now believes that it will soon lose its rights to use the KIQS studio and tower site, primarily because of problems involving the AM tower's iso-couplers and also with signal attenuation caused by the co-located AM and FM antennas.

<sup>5/</sup> PSN, on the other hand, cannot reasonably be expected to hurriedly construct its own FM tower at Willows and to build its own Willows studio in view of the strong likelihood that PSN soon should be able to build an "upgraded" KQSC (FM) facility near Dunnigan, CA, pursuant to a change of community authorization from the FCC. In such circumstances, PSN is faced with the realistic possibility of having to take the station off the air pending the completion of the pending Rule Making proceeding at the FCC. <sup>6/</sup>

4. An additional problem has developed between PSN and Mr. Rusnak. One element of the parties' post-consummation agreement regarding PSN's use of the AM station's facilities is that KQSC (FM) would continue to broadcast English language program-

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<sup>4/</sup> Id.

<sup>5/</sup> Id.

<sup>6/</sup> Id.

ming. <sup>7/</sup> For a myriad of reasons, however, PSN is increasingly looking to commence the use on KQSC (FM) at Willows of PSN's own network-delivered, Spanish-language programming. <sup>8/</sup> That legitimate business judgment by PSN is, unfortunately, likely to worsen the already strained relations between PSN and Mr. Rusnak, who recently signed a long-term programming agreement for KIQS (AM) with another Spanish-language program service. <sup>9/</sup> Yet, unless PSN soon changes the programming format of KQSC (FM) to its own satellite-fed, Spanish-language programming, the stand-alone FM station's financial success is problematic. <sup>10/</sup>

5. Finally, the very uncertainty regarding the FM station's future operations at Willows has created special problems that also threaten the financial viability of KQSC (FM). The station is increasingly unprofitable. <sup>11/</sup> The core difficulty is the inability of the station at present to garner long-term advertising contracts -- nationally or locally -- because of advertisers' doubts about the long-term status of the station's operations at Willows. <sup>12/</sup> The station's 1993 proposal to change the community of license from Willows to Dunnigan, CA -- and to move the KQSC (FM) antenna site in order to increase the station's audi-

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<sup>7/</sup> Id.

<sup>8/</sup> Id.

<sup>9/</sup> Id.

<sup>10/</sup> Id.

<sup>11/</sup> Id.

<sup>12/</sup> Id.

ence reach to a level that would sustain continued operations -- is well known among the station's current advertisers, who are increasingly reluctant to purchase time on KQSC (FM) on anything but a short-term basis. <sup>13/</sup>

6. In these circumstances, PSN most respectfully submits that the public interest favors the expedition -- to the greatest extent feasible -- of the pending Rule Making proceeding. PSN respectfully requests that -- to the extent possible -- a Report and Order be issued by December 15, 1994.

7. Minority Ownership. In view of PSN's minority-owned status, <sup>14/</sup> expedition of this proceeding would further the FCC's policies designed to nurture minority ownership of broadcast stations. <sup>15/</sup>

8. Consistent with Precedent. The expedition of this proceeding would not be inconsistent with FCC precedent. The Commission has recently issued a Report and Order in another Rule Making proceeding within six months of the issuance of a Notice

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<sup>13/</sup> Id.

<sup>14/</sup> PSN's sole shareholder is Jaime Bonilla Valdez, a Hispanic-American resident of San Diego, CA.

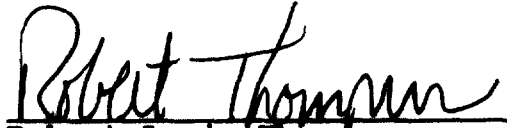
<sup>15/</sup> FCC Chairman Reed E. Hundt and Vice President Al Gore have both recently emphasized the FCC's interest in both promoting and nurturing minority ownership of broadcast stations. See, e.g., FCC Chairman Hundt's "Address Before the Int'l Radio and Television Society, New York City, October 19, 1994, at 6; Broadcasting & Cable, September 19, 1994, at 6 (Gore terms minority ownership levels a "disgrace" and calls on FCC to enhance minority ownership in broadcasting).

of Proposed Rule Making. See, e.g., Report and Order, RM-8386,  
released July 5, 1994 (issued less than 6 months after NPRM).

CONCLUSION

PSN most respectfully requests that the FCC expedite this proceeding to the greatest extent possible and, if practicable, issue a Report and Order by December 15, 1994.

Respectfully submitted,



Robert Lewis Thompson  
PEPPER & CORAZZINI, L.L.P.  
1776 K Street, N.W., Suite 200  
Washington, D.C. 20006  
(202) 296-0600

November 1, 1994

cc: Counsel of Record

Counsel for Pacific Spanish  
Network, Inc.

### Sworn Statement

Jaime Bonilla Valdez does state under penalty of perjury that the following is true and correct:

1. My name is Jaime Bonilla Valdez and I am president and chairman of Pacific Spanish Network, Inc. ("PSN"), the licensee of KQSC (FM), Willows, CA.

2. PSN is the Petitioner in the FCC's Docket 94-29, by which PSN seeks to upgrade station KQSC (FM) by reallocating the Class A channel at Willows to Dunnigan, CA as a Class B1.

3. After PSN acquired KQSC (FM) from its prior owner Anthony Rusnak, PSN obtained from Mr. Rusnak the right for KQSC (FM) to use both the KIQS studio and the KIQS (AM) tower for KQSC (FM) operations. Our understanding at that time was that the Rule Making that Mr. Rusnak had filed in 1993 [and which PSN supported] would be successfully completed in approximately a year, after which KQSC (FM) would no longer operate in Willows and, thus, no longer use Mr. Rusnak's tower or his studio space.

4. In recent discussions with Mr. Rusnak, it has become increasingly clear to me that KQSC's continued operations at the KIQS (AM) site are doubtful. First, Mr. Rusnak has complained in recent weeks of worsening signal attenuation problems that his AM station is suffering because KQSC's antenna is mounted on his AM

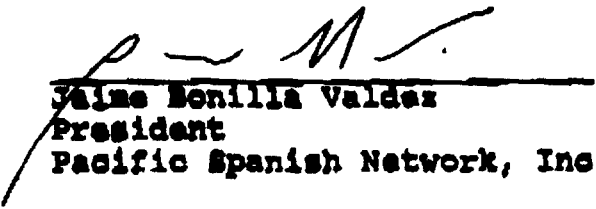


tower. Mr. Rusnak has told me that the problem has gotten much worse since KQSC (FM) increased power, approximately a month ago. He also has objected to increased tower maintenance because of the iso-couplers. I have asked him for a few weeks' time to try to solve these problems. In reality, however, PSN cannot afford to hastily construct its own tower and its own studio for KQSC (FM) at Willows, given the pendency of its Petition to change the station's community of license and to construct an upgraded, Class B1 facility. PSN's only practical choice is to urge the FCC to expedite the pending Rule Making. Otherwise, PSN will have to take KQSC (FM) off the air until the Rule Making proceeding is completed.

5. Second, another problem is complicating PSN's relationship with Mr. Rusnak and adding to the difficulties regarding KQSC's use of his tower and his studios. After the Closing on PSN's purchase of the FM station, I agreed with Mr. Rusnak that KQSC would continue to broadcast English language programming. At this point, however, the financial losses of KQSC's operations at Willows are such that I am now planning to use PSN's own Spanish language network programming -- which PSN can deliver by satellite -- for KQSC (FM). Mr. Rusnak is concerned about the viability of his AM operation -- now under a contract for Spanish language programming -- should KQSC (FM) commence broadcasting in Spanish.

6. Finally, the uncertainty of KQSC's future operations at Willows, in light of the pending proposal to change the community of license, is making it almost impossible for KQSC (FM) to obtain long-term commitments from local and national advertisers. Advertisers cannot be certain how long KQSC will be operating at Willows. Sales of time on KQSC simply become harder and harder.

7. In sum, PSN's ability to sustain KQSC's operations at Willows is limited. It is because of this development that PSN most respectfully requests that the FCC make every reasonable effort to expedite its consideration of the Petition and, if practicable, to issue a decision by December 15, 1994. Executed on October 31, 1994.

  
Jaime Bonilla Valdez  
President  
Pacific Spanish Network, Inc.